

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROLLY O. KINNELL,

Petitioner,

v.

CASE NO. 00-3235-SAC

STATE OF KANSAS,

Respondent.

ORDER ON MOTION

This matter is before the court on petitioner's "Motion Upon One Page to Present Clear Cause of My Innocence Upon District Court Abuse Without Lawful Jurisdiction Upon Restrictions." (Doc. 90). The motion is construed as a "Motion for Leave to File Pleading", which is the only motion petitioner is permitted to file herein. The court finds that this motion does not comply with filing restrictions in this case, including that the content is not "based upon relevant facts, Supreme Court authority, or arguments that he has not presented in prior pleadings filed herein". The allegations made in this motion again very clearly challenge Kinnell's state conviction. Mr. Kinnell has been repeatedly informed that claims which either were or could have been decided in this case are not a proper basis for post-judgment relief¹.

¹ If the court granted this motion to file pleading and permitted Mr. Kinnell to submit a motion for relief from judgment, it technically would be a second and successive § 2254 petition requiring prior authorization from the Tenth Circuit Court of Appeals under 28 U.S.C. § 2244(b)(1). Petitioner is well aware that this court lacks jurisdiction to consider the merits of any old or new § 2254 claims challenging his 1998 state conviction, unless he has obtained prior authorization. United States v. Nelson, 465 F.3d 1145, 1148 (10th Cir. 2006).

Accordingly, this motion, treated as a Motion for Leave to File Pleading, shall be denied.

NO FILE ORDER

The court previously entered an Order herein finding that Mr. Kinnell continues to abuse judicial process in this case despite the court's considerable efforts to curtail that abuse, and setting forth the history of that abuse (Doc. 88). The court announced its intention, under the unique circumstances described in that Order, to enjoin Mr. Kinnell from filing any further papers of any kind in this case. Mr. Kinnell was given time to object to the proposed no-file restriction. He submitted his objections (Doc. 89). The court has considered those objections and finds they have no merit. Consequently, for the reasons stated in its Order of April 1, 2009, the court enters the following no-file Order.

IT IS THEREFORE ORDERED that petitioner's "Motion for Leave to File Pleading" (Doc. 90) is denied.

IT IS FURTHER ORDERED that Rolly Kinnell, petitioner herein, is hereby enjoined from filing any further materials in this case.

The clerk is directed to flag this case accordingly, to promptly return any and all materials submitted by Mr. Kinnell for

Justice would not be served by allowing petitioner to file another motion that must be construed as a second and successive habeas petition. See In re Cline, 531 F.3d 1249, 1252 (10th Cir. 2008).

filing herein with a copy of this Order, and to note the return upon the docket.

IT IS FURTHER ORDERED that any Notice of Appeal of this Order filed by Mr. Kinnell that is submitted without prepayment of the full appellate filing fee is not taken in good faith.

IT IS SO ORDERED.

Dated this 11th day of August, 2009, at Topeka, Kansas.

s/Sam A. Crow
U. S. Senior District Judge